Public Prosecutor v Jong Chin Chin

HIGH COURT (MIRI) — CRIMINAL TRIAL NO MR 1 OF 1994
RICHARD MALANJUM J
7 JULY 1995

Criminal Law *— Murder — Defence of insanity — Burden of proof on accused — Penal Code s 84*

The accused was charged with murdering her six year old daughter outside her home in Sarawak on 22 September 1988. Two witnesses testified that they had seen the accused stabbing the girl with a knife. The accused denied murder but pleaded she was suffering from an unsound mind at the time of the killing. Evidence was led that she had been diagnosed as schizophrenic in 1974.

Held, acquitting the accused but ordering her detention:

(1) The injuries on the victim were inflicted by the accused with the intention to cause bodily injuries which were sufficient in the ordinary course of nature to cause death.

(2) Because of her mental illness, there was a doubt as to whether the accused at the time of inflicting the injuries on the deceased was capable of knowing and did know the nature of her act or that what she was doing was wrong or contrary to law. The element of intention could not therefore be said to have been proven beyond reasonable doubt by the prosecution at the end of the whole case.

(3) There was an absence of motive on the part of the accused in causing the injuries on her own daughter. Absence of any motive was yet another important indication of unsoundness of mind.

(4) She therefore had to be acquitted but detained pursuant to s 348(i) of the Criminal Procedure Code in prison.

[Bahasa Malaysia summary

Si tertuduh dituduh membunuh anak perempuannya yang berumur enam tahun di luar rumahnya di Sarawak pada 22 September 1988. Dua orang saksi memberi keterangan bahawa mereka melihat si tertuduh menikam gadis itu dengan sebilah pisau. Si tertuduh menafikan pembunuhan tetapi mengaku bahawa beliau sakit otak pada masa pembunuhan itu. Keterangan diberikan bahawa beliau telah didiagnosis sebagai seorang pesakit skizofrenia dalam tahun 1974.

Diputuskan, melepaskan si tertuduh tetapi memerintahkan tahanannya:

(1) Kecederaan pada mangsa telah dilakukan oleh si tertuduh dengan niat mengakibatkan kecederaan badan yang mencukupi dalam perjalanan alam semulajadi yang biasa untuk mengakibatkan kematian.

(2) Oleh kerana kesakitan otaknya, terdapat keraguan sama ada si tertuduh pada masa beliau menikam si mati berupaya mengetahui dan memang mengetahui sifat tindakannya atau bahawa apa yang dibuatnya adalah salah atau bercanggah dengan undang-undang. Unsur niat tidak boleh dikatakan telah dibuktiakn melampaui keraguan yang munasabah oleh pihak pendakwa di akhir seluruh kes.

(3) Motif ketiadaan pada belah si tertuduh dalam mengakibatkan kecederaan pada anak perempuannya. Ketiadaan motif adalah satu lagi petunjuk yang penting tentang kesakitan otak.

(4) Oleh itu beliau mesti dilepaskan tetapi ditahan di penjara di bawah s 348(i) Kanun Acara Jenayah (NMB Bab 6).]

Notes

For cases on murder, see 4 *Mallal's Digest* paras 526–544, 677–771; [1989] *Mallal's Digest* paras 633–637; [1990] *Mallal's Digest* paras 475–476; [1991] *Mallal's Digest* paras 856–863; [1992] *Mallal's Digest* paras 690–713.

Cases referred to

Goh Yoke v PP [1970] 1 MLJ 63 (refd)
Yeo Ah Seng v PP [1967] 1 MLJ 231 (refd)

Legislation referred to

Criminal Procedure Code (FMS Cap 6) ss 348(i), 399
Penal Code (FMS Cap 45) s 84

Thomas Akin Jelamin (Deputy Public Prosecutor) for the prosecution.
Lili Puk (*DF Abang Zen*) for the defendant.

Richard Malanjum J: The accused is charged for the murder of her own daughter, Jee Siow Chin, who was then about six years old at the time of her death. The offence was alleged to have been committed on the 22 September 1988 at about 8.30am at Canada Hill, Lopeng, Miri, Sarawak.

It is the case for the prosecution that in the morning of 22 September 1988 at about 7am PW11, Hew Nyuk Lan, heard a dog barking. She was then in the kitchen of her house. She went to the main door to look out but her view was blocked. She therefore went to look out through the window after closing the main door. From there she saw the accused dragging her daughter by the legs. The daughter made no sound. According to this witness she could see clearly that it was the

accused and the daughter. And she recognized the accused as they were neighbours. At the time she saw the incident she was about 40–50ft away from the accused. This witness could also see that the little girl was the daughter because when she was left on the road the face was towards her house. PW11 said that the face of the little girl was red in colour. And this witness said that she had seen the daughter before the incident.

PW11 went on to testify that on leaving the daughter on the road which was at the entrance of the road leading to her (PW11) house, the accused went off. Later, she returned to the spot where her daughter was lying. The accused was holding a sickle. And PW11 said that at that point in time the daughter called out 'mama'. However, with the sickle the accused proceeded to hit the daughter twice on the face. Thereafter she saw the accused dragging the daughter again down the slope while holding the sickle. PW11 did not know where she went.

When cross-examined PW11 said that while the daughter was lying on the road she moved side-way a little. As to why she closed the main door PW11 said that she was afraid and she was alone at that time.

The prosecution also called PW3, Urusula Loh Hung Siong. In her evidence PW3 said that it was about 8.30am when she returned after doing her marketing. She wanted to watch a video tape but she heard a noise outside. The noise was like someone was talking loudly in Khek dialect saying once 'kill you'. PW3 thought someone was killing a snake. So she came out of her house to the kitchen to ask that person what she was hitting. But she could not understand what the person was talking about except that she seemed to be scolding. And PW3 recognized that person to be the accused. The distance between them was about 50m and the accused was on the road above the house of PW3.

According to PW3 when she saw the accused she was holding a knife which looked like a sickle. The accused was beating something but PW3 could not remember how many times. And PW3 said that it was while she was beating that the accused said 'kill you' once. After the accused left PW3 walked up to see what had happened. She saw a lot of blood on the road. So she took a stick to clear the bushes. She saw something that look like a doll with her upper part seemed to be moving. PW3 was scared. Thus, she went home and called her husband. This witness was also asked about her relationship with the accused. She replied that she had seen the accused before the incident and had known her for about four years. They only greeted each other when PW3 passed the accused's house in her car.

Under cross-examination PW3 testified that she could clearly see the accused that morning as her view was not blocked. And she said that she only walked up after the accused had left the scene. To another question PW3 replied that she was the closest neighbour of the accused at that time.

A In his evidence, PW4, Yee Weng Kit testified that it was on the morning of 22 September 1988 when his wife, PW3, called him by phone to return home as there was a killing at the road side. He returned and on his way back to his house, he saw a corpse at the road side of well No 7. He proceeded therefore to report to the police by telephone about the finding. There is a discrepancy in the evidence of B PW4 pertaining to the number of the well where the corpse was found. He referred to well No 7 whereas PW3 said that it was well No 1. But having considered the issue I do not think this discrepancy is of any significance. After all in the police report (exh P1) purportedly to contain what was reported by PW4, the well referred to was well No 1.

C The police first came to know of this case after PW4 telephoned them. The report (exh P1) was taken down and reduced to writing by PW1 Lance Corporal No 43464 Rahman Sanjal. Thereafter an investigation team was set up. Lance Corporal No 45745 Putit Hamdani (PW2) was the police photographer in this case. According to his D evidence it was on 22 September 1988 that he was instructed by one Inspector Tan Hock Tho to accompany him to go to Canada Hill. Upon arrival at that place he was told to take photographs of a corpse of a child. He took 28 photographs together with the negatives as exhibits exh P2(1–28) and exh P2N (1–28) respectively.

The next part of the prosecution's evidence was on the arrest of E the accused. Sgt No 78216 Wilson Setu Ak Pandong (PW5) testified that he arrested the accused at a house No 2760, Jalan Lopeng, Canada Hill, Miri. Upon arrest he brought her to the Central Police Station Miri and thereafter lodged a report on the arrest (exh P3).

In answer to the question under cross-examination PW5 said that F he found the accused standing alone inside a room of the house. She looked scared and shivering. Her face was pale and did not say anything even when it was explained as to why she was being arrested. But there was no resistance. According to PW5 there were four of them who came to arrest the accused.

G Evidence was also led as to the finding of the corpse of a child by the police. Corporal No 104051 Jamain Atan (PW6) gave evidence that on 22 September 1988 at about 9.20am he was instructed by Inspector Tan Hock Tho to come along with him to Canada Hill. On arrival they went to a dumping area where they found a corpse of a child. After it was examined by Inspector Tan, the body was taken onto the mud H road. Thereafter it was brought to the Miri General Hospital.

Chief Inspector Tan Hock Tho (PW9) also gave evidence pertaining to the finding of the corpse. In his testimony he said that he came to know of a body being found at the Canada Hill from a person by the name of Richard Szeto. He went to the scene and on arrival he saw a I body of a girl wearing a yellow blouse lying downward and motionless in the ravine. PW9 saw a wound on the centre of the head of the girl. Blood stains were also seen on the blouse. And instead of going down to the ravine to check the body PW9 went to the house of the deceased as was told by the people at the scene. The path leading to the house

had blood-like stains. On entering the house he found that a certain section of the wooden floor was wet. As PW9 found no one in the house he returned to the scene where the corpse was found. With the help of two detectives PW9 went into the ravine and retrieved the body. On examination he also found a wound on the right side of the face deep enough to expose the cheek bone. The left arm was almost severed. After taking the body onto the road, PW9 said that he instructed PW6 to escort the body to the mortuary of the Miri General Hospital.

This witness also testified that while at the house of the deceased for the second time the accused was brought to him by PW5. According to PW6 the accused was mumbling away but he could not understand what she was talking about. To him she looked normal. This observation appears to differ from PW5 who said that the accused was pale and shivering. However, PW9 was not asked what he meant by 'normal'. I find the discrepancy to be immaterial to warrant any finding of disbelieving any of these two witnesses.

A post-mortem on the body was conducted by Dr Khoo Teck Beng on the 23 September 1988. It was witnessed by PW9 and by Jee Chee Fah, the father of the deceased, Jee Siow Chin. Before the post-mortem was done the father identified the body as his daughter. Now, Dr Khoo Teck Beng did not come to testify in this trial. The prosecution relied on s 399 of the Criminal Procedure Code. For that purpose Lance Corporal No 48312 Steward Aying (PW7) was called. This witness testified that he served the post-mortem report on the accused who acknowledged receipt. The post-mortem report and the acknowledgement were therefore tendered as exhibits and as there was no objection I admitted them. The acknowledgement and the post-mortem were therefore marked as 'exh P5' and 'exh P6' respectively.

Exhibit P6 (post-mortem report) indicates the cause of death of the deceased, Jee Siow Chin, to be skull fractures and multiple laceration wounds. As the examining doctor was not called it may be appropriate that I should reproduce the summary of autopsy findings verbatim:

> Summary of Autopsy Findings
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> On examination, the deceased was a girl, corresponds to the age as reported. The body was pale, dirty with sand and some leaves over it. There were three laceration wounds over the head:
>
> 1 Laceration wound, about 20cm long, curving down from the vertex to the right side of the jaw, exposing underlying skull fracture and brain.
>
> 2 Laceration wound, about 5cm long at her right chin extending horizontally (sic) to the upper lip exposing underlying bone.
>
> 3 Laceration wound about 6cm at left side of the forehead with underlying skull fracture extending down vertically.
>
> There were also:
>
> 1 Closed fracture at the mid-shaft of right humerus.
>
> 2 Partial amputation of left forearm near the elbow exposing fracture ends of left radius and ulna bones.

3 Laceration wound, about 2cm long at right iliac crest exposing underlying bone.

X-rays examination showed:

1 Multiple linear skull fracture.
2 Fracture of mandible.
3 Fracture of right humerus.
4 Fracture of left radius and ulna.

There was no dispute on the findings from the learned counsel for the accused. Hence, there is no doubt at all that the cause of the death of the deceased was as stated in exh P6. And it is my finding that the prosecution has proven that issue beyond reasonable doubt at the close of its case. It was contended by the learned counsel for the accused that the prosecution had not established beyond reasonable doubt that the deceased died at the time and place as alleged in the charge. She argued that had medical treatment been given to the deceased she might not have died. With respect, this contention omitted one basic point and that is there was no allegation from the learned counsel that there was a break in the causation as to the death of the deceased. And with the post-mortem report (exh P6) clearly indicating the cause of death I do not find any merit in the argument. After all if not for the injuries inflicted there would have been no question of medical treatment for the deceased. There was no doubt and I was satisfied at the close of the prosecution's case that the injuries sustained by the deceased were the direct cause of her death.

And it was also submitted that PW11 only saw the deceased being hit twice by the accused yet the post-mortem report showed several injuries. Thus, learned counsel contended that the prosecution had not shown that all the injuries were caused by the accused. This argument may appear to be attractive if the evidence are to be examined in isolation. But if the evidence are examined and considered as a whole, which should be the case, then I find that contention to be groundless. There was evidence from PW9 Chief Inspector Tan Hock Tho, that he saw stains of blood underneath the house of the deceased as well as along the path from the place where the body of the deceased was found to the house of the deceased. It was also seen by PW9 that the wooden floor leading to the room in the house was wet and appeared to have been washed. These pieces of evidence put together only showed that the deceased must have also suffered injuries while at the house. The fact that she was being dragged by the legs as seen by PW11 and that she could only move a little side-way when she was left on the road could only mean that the deceased must have been already severely injured when PW11 first saw her. Hence, I reject such a contention of the learned counsel for the accused.

Furthermore, it was also not in dispute that the deceased was Jee Siow Chin whose body was found in the ravine near well No 1 of Canada Hill, Lopeng, Miri on 22 September 1988.

The police in their course of investigation also collected evidence besides taking photographs. PW9 said that while at the scene of the crime on 22 September 1988 he drew the sketch plan of the place. This was tendered and marked as 'exh P8' with the neat sketch plan admitted 'exh P8(N)'. He also collected samples of blood-like stains found underneath the house of the deceased and from the spots marked 'C', 'D', 'E', 'F' and 'G' on 'exh P8(N)'.

PW9 also testified that on 23 September 1988 at the mortuary of the Miri General Hospital, he seized the yellow blouse and the white underwear of the deceased and took some blood samples from her.

And on 24 September 1988 at about 9.20am a police team led by PW9 went to search for the murder weapon. The accused brought the police to a place at Lopeng, Canada Hill Miri. On searching the area Border Scout George Kudo (PW8) found a sickle with a wooden handle (exh P7) at about 9.40am lying on top of some bushes. On examination PW9 saw blood-like stains and some hairs stuck on the blade. PW9 seized it as an exhibit and lodged a report (exh P10) regarding the finding. At about 11am PW9 went back to the mortuary at the hospital to get hair sample from the deceased. Subsequently, he also seized the blue-stripped evening gown from the accused. After packing all the exhibits which he gathered in connection with this case in ten envelopes and two packages, PW9 instructed PW6 to escort them to the chemistry department in Bintulu. On 16 August 1989 PW9 received back the ten envelopes and two packages and also the report from the chemist.

The chemist, Khoo Ah Kaw, (PW10) was called to testify. He gave his qualification and confirmed that he had given evidence in courts before. Having considered his qualification I find him to be an expert witness and qualified to give evidence as a chemist.

According to PW10 he received the ten envelopes and two packages from PW6 on 15 October 1988 at about 8.25am. He also received the request for analysis. He proceeded to analyze the exhibits after a couple of weeks or a month from the receipt. PW10 said that the 12 strands of hair found on the sickle were human hair and on analysis they were similar to the human hair specimen as provided. And after examining and analysing the exhibits PW10 said that he prepared a report. This report was subsequently admitted in this trial as 'exh P23'. There was hardly any dispute as to the contents of the report from the learned counsel for the accused. Nevertheless, the relevant portions of the report may be appropriately reproduced herein verbatim:

E1 — A sickle bearing 12 strands of hair.
E2 — A yellow/white blouse.
E3 — A white underwear.
E4 — A blue/green/white night gown.
E5 — A plastic packet containing a piece of cotton wool.
E6 — A plastic packet containing two stones.
E7 — A plastic packet containing some soil.

E8 — A plastic packet containing some brown grass.
E9 — A plastic packet containing five stones.
E10 — A plastic bag containing three stones and some soil.
E11 — A plastic bag containing a specimen of human head hair.
E12 — A bottle containing a specimen of human blood.

On analysis, I found:

(i) Blood specimen 'E12' to be of group O.
(ii) Human bloodstains of group O on exhs 'E2', 'E3', 'E5' and E10'.
(iii) Human bloodstains insufficient, for grouping on exhs 'E1', 'E4', 'E6' — 'E9'.
(iv) The hairs on 'E1' to be similar to hair exh 'E11'.

Having examined and considered the evidence adduced by the prosecution in this case I was satisfied that the prosecution had established beyond reasonable doubt at the close of its case that it was the accused who inflicted the injuries on the deceased which caused her death as clearly stated in exh P6. I came to that conclusion in the light of the direct evidence of PW11 and PW3. There was hardly any challenge to their evidence. Their evidence are also corroborated by the finding of the sickle (exh P7) with human hairs stuck to the blade. And the chemist PW10 and his report (exh P23) confirmed that the strands of hair found on the sickle were similar to the hair specimen taken from the deceased. Obviously the sickle was used as the weapon and I find that as a fact. It was also not challenged that PW11 and PW3 saw the accused the morning of 22 September 1988 holding a sickle similar to exh P7. Learned counsel for the accused submitted that the sickle (exh P7) could not have been the murder weapon as there was no special serial number on it and any sickle could replace exh P7 in appearance. One particular point she pointed out was the police report of PW9 (exh P10) which stated that he found two strands of hair on the blade whilst PW10 said that he found 12 strands of hair on the sickle. At a glance there appears to be an inconsistency here between the evidence of PW9 and PW10 regarding the finding of the strands of hair. But on closer examination of the evidence I do not think so. In his testimony in court PW9 said that he found some hairs stuck to the blade of the sickle. Whereas PW10 testified that he found 12 strands of hair on the sickle. He did not specify the blade. Thus, there is no serious discrepancy. Anyway, even if the finding of the hairs on the sickle should be discounted, the testimonies of PW3, PW11, PW8 and PW9 showed that as a whole exh P7 was the weapon used.

It was also submitted that since no blood stains were found on the accused or on her clothing it was therefore not proved that it was the accused who committed the crime. There are two assumptions on this argument, firstly, that blood must have spurted from the body of the deceased and secondly, the accused was apprehended immediately without giving her any chance of washing up or changing her clothing.

But from the evidence of PW9 it was obvious that washing took place as the wooden floor leading to the room in the house was wet. Thus, I do not think that submission requires further consideration.

The next issue which I considered before calling for the accused to enter upon her defence was whether there was any intention or knowledge to inflict the injuries which caused the death of the deceased. The ingredient is whether such act of the accused which caused the death of the deceased was done with the intention of causing death or that it was done with the intention of causing bodily injury as the accused knew to be likely to cause death or was sufficient in the ordinary course of nature to cause death. Having examined exh P6 in particular the injuries sustained by the deceased and the weapon used exh P7 as well as the evidence adduced as a whole I was satisfied that at the close of the case for the prosecution, the prosecution had established beyond reasonable doubt that there was intention to cause bodily injuries which were sufficient in the ordinary course of nature to cause death.

For the foregoing reasons I therefore called for the accused to enter upon her defence. Of course I also took into account that the learned counsel for the accused at the end of the prosecution's case conceded that there was a case to answer as no submission was made to the contrary.

In this case the accused did not give any evidence. But I am very conscious that her silence should not be given any adverse inference as to her guilt in this case. It was one of her three options when her defence was called.

Learned counsel for the accused called five witnesses to testify for the accused. The line of defence taken was in effect under s 84 of the Penal Code. Section 84 reads:

> Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

Besides the witnesses there were two medical reports (exhs D1 and D2) submitted pertaining to the mental state of the accused which went back to as for as 1974. The learned deputy conceded the contents of exh D1, that is, the medical report dated 6 October 1994 on the accused prepared and signed by Dr Abang Bennett Taha. Although the doctor was not called his report was tendered through the current director of the Sarawak Mental Hospital, Dr Lau Kim Kah (DW1). I allowed the admission as DW1 said that Dr Abang Bennett Taha is now pursuing his studies overseas and will only be back in January 1996 provided he can successfully complete his course. It will cause undue delay in the disposal of this case if the said doctor is to be awaited. Further, to bring him back just to tender the document which the prosecution is not contesting as to its contents, will be incurring unnecessary expenses in the circumstance. There was also no challenge from the prosecution as to the qualification or expertise of the said doctor.

A As the maker of exh D1 was not present during the trial perhaps I should therefore reproduce the relevant part of his report verbatim:

> Medical Report
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> Mdm Jong Chin Chin
> K 589741
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> B
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> 1 Mdm Jong was first seen at this hospital on 8 October 1974 for being aggressive, smiling to herself for no apparent reasons, keeping to herself and non communicative. She was diagnosed as a schizophrenic patient. She was not regular with her follow up and had a total of three admissions from 1974–1982.
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> C 2 In November 1988 she was removed from the prison under s 34(1) of the Prison Ordinance and admitted to this hospital because of her psychotic illness while in prison. She was behaving strangely and was talking irrationally then. She improved gradually and was discharge (sic) on 4 April 1989.
>
> 3 She was readmitted under s 342 of the CPC on 28 April 1989 and D discharged on 30 May 1989.
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> 4 The observation and examination of her mental status during these periods (November 1988—30 May 1989) it was definite that she was suffering from a serious mental disorder (Schizophrenia) that affect her faculty of perception (sic) thinking, judgment and beliefs. Her illness ran a chronic course with periods of remission if she was on E her medication and relapse when she was not on any treatment.
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> 5 In my opinion at the time of the alleged criminal act she understood the nature of the act but was not aware that it was wrong to do that. Her behaviour and actions was influenced by the schizophrenic illness she was suffering.

F Of course this court is not obliged to accept the opinion expressed in exh D1 as wholly conclusive in coming to a decision in this case.

The surrounding circumstances and the other evidence adduced for the defence should also be looked at. Moreover, this court must also consider whether or not the prosecution has adduced any evidence to G contradict those evidence adduced for the accused in relation to her mental state at the time of committing the offence. If the prosecution did not or failed to rebut those evidence beyond reasonable doubt then the proper finding or conclusion that this court should make is that the prosecution had not established beyond a reasonable doubt at the conclusion of the whole case that there was the necessary intention H including the intention to cause bodily injuries which were sufficient in the ordinary course of nature to cause death. And it is to be noted that the burden on the accused to establish the defence of unsoundness of mind is only on the balance of probabilities. (See *Goh Yoke v PP* [1970] 1 MLJ 63.)

I As stated earlier on in this judgment that the prosecution must prove beyond all reasonable doubt that the defence of unsoundness of mind cannot be entertained in the light of the evidence adduced. And unsoundness of mind here means that at the time of the accused doing

the alleged act of killing, she was, by reason of unsoundness of mind, incapable of knowing the nature of the act or incapable of knowing that what she was doing was either wrong or contrary to law. A

Now, there was no dispute as to the mental history of the accused as early as 1974. She was then diagnosed as a schizophrenic patient resulting in three admissions to the Sarawak Mental Hospital between the years of 1974 and 1982 (see exh D1). And from the evidence of DW2 Dr Uma Devi and DW3 Tan Nai Eng, a Hospital Assistant, the accused had been admitted to the psychiatric unit of the Miri General Hospital for four times between 1978 and 1983. In fact according to DW2 even on 26 August 1988 the accused came for follow-up treatment. But this witness could not say if the accused took her medication which was so essential if relapse were to be avoided. B C

DW3, though only a hospital assistant, appears to me to have the longest period in treating the accused. And I find this witness, though may not have the high medical qualification, to be an expert in his field having been doing the same type of work for the past 32 years. He has been dealing with psychiatric patients for that period of time and has also given evidence in courts in at least four previous cases which evidence were accepted. D

According to DW3 the accused has been his patient since 1978. In treating the accused DW3 said that he gave her injection of Phenonazine which had a lasting effect of two to six weeks. She was also on three types of tablets, namely, Clorpromazine, Benzhexol and Haloperidol. The first type was to be taken at night whereas the latter two were supposed to be taken twice a day. And on top of that the accused was supposed to see DW3 once in every four weeks. According to DW3 besides the medication other factors must be considered pertaining to the mental state of the accused such as family support, living condition and stress. These could worsen her condition in spite of her regular medication. Indeed it was in the evidence of PW9 that the accused was living in a house which was barely furnished and in disorderly condition. E F

The eldest brother of the accused, Jong Lu Chok (DW4) was also called to testify. His evidence related to the past behaviour of the accused and her admission to the Sarawak Mental Hospital in 1974. The family background was also related. But I do not think I should make any conclusion on this particular evidence as there was no expert evidence adduced that indeed mental illness is hereditary. G H

In the light of the evidence as a whole adduced (in particular the contents of exh D1 which I have no hesitation to consider and to give due consideration including the opinion expressed therein) pertaining to the mental state of the accused as early as 1974 and in the absence of any evidence to the contrary from the prosecution I am in doubt as to whether the accused at the time of inflicting the injuries on the deceased, Jee Siow Chin, was capable of knowing and did know the nature of her act or that what she was doing was wrong or contrary to law. As I entertain such a doubt the element of intention cannot I

A therefore be said to have been proven beyond reasonable doubt by the prosecution at the end of the whole case. I am fortified in my conclusion by the absence of motive on the part of the accused in causing the injuries on her own daughter. Absence of any motive is yet another important indication of unsoundness of mind. (See *Yeo Ah Seng v PP* [1967] 1 MLJ 231 FC.) Accordingly, the accused is therefore acquitted B of the offence charged for the aforesaid reason.

Pursuant to s 348(i) of the Criminal Procedure Code, I order that the accused be continued to be kept in the custody of the prison in Lambir Prison Miri pending the order of the TYT Yang Di-Pertua Negeri Sarawak. Should there be a necessity that the accused should be C moved to Kuching prison in view of the fact that Kuching is her home town and her surviving family members are there, this order should include her transfer and custody to the Kuching prison.

In passing, I only wish to say that if only the relevant authorities such as the hospital and the welfare department had acted prudently D the life of an innocent six year old little girl would have been spared. Obviously society has not been kind to the accused and her family and I do hope that the death of Jee Siow Chin shall not be in vain. It is time for the relevant departments and voluntary bodies to be on a look-out for this kind of family situation and to protect the innocent from the menace of the parent or parents with unsound mind. This particular E case is indeed a very sad episode as gathered from the evidence adduced. From the evidence of DW5 Rosy Yeo Choo Kin, who was and is the medical social worker of the Miri General Hospital, the accused was referred to her as early as 1982. The accused was then known to have neglected the deceased when she was a little baby. Even the birth of the F deceased was a reflection of a human tragedy as the evidence revealed that the accused gave birth to her alone under banana trees in the compound of her neighbour. And yet no one came to help. Even the hospital left nature to take its own course. Indeed our society is far from a 'caring society' a phrase which has been touted so often nowadays.

G *Order accordingly.*

Reported by Lindy Course

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